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02/06/2006 22:21 FAX 12018942400		13112506 0110007 HP PT		0001	
					
<p style="text-align: right;">                 Unlabeled                  Patent Department                  700 Sylvan Avenue, C2                  Englewood Cliffs, NJ 07632                  Tel: (201) 894-9955 or                  (201) 894-9956 or                  Fax: (201) 894-9400             </p>					
<b>FAX TRANSMITTAL</b> <b>PRIVILEGED AND CONFIDENTIAL</b>					
To: Ex. Carolyn A. Padon Group: 1761		From: Gerard J. McGowan, Jr. No. of Pages: 8 (including cover sheet) Date: February 6, 2006			
Fax No.: 571-273-6300					
RE: Van Buren et al.					
Attached please find:					
1. Amendment after final 2. Transmittal letter 3. Extension Request 4. Notice of Appeal					
for:					
Applicant: Van Buren et al. Serial No.: 10/635,711 Filed: August 6, 2003 UNUS No.: 98-0032-A-UNIT					
IF PROBLEMS OCCUR WITH THIS TRANSMISSION, PLEASE CONTACT PATTI O'DONNELL AT EXT 5646. WHEN RESPONDING TO SEND VIA FACSIMILE TRANSMISSION, PLEASE USE FAX NO. 201-894-2400.					
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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this correspondence is being facsimile transmitted to:

"Commissioner for Patents"  
P.O. Box 1450  
Alexandria, VA 22313-1450

on February 6, 2006



Gerard J. McGowan, Jr.  
Reg. No. 29,412  
Attorney for Applicants

February 6, 2006  
Date of Signature

**PATENT**

UNUS #98-0032-A-UNI  
CASE #F7420(V)

**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP # 1761**

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Van Buuren et al.  
Serial No.: 10/635,711  
Filed: August 6, 2003  
For: Olive Oil Containing Food Composition

Group: 1761  
Examiner: Carolyn Paden  
Englewood Cliffs, New Jersey 07632

**AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed October 10, 2005, a one month extension of time for which is being requested, please consider the following remarks.

**Remarks/Arguments** begin on page 2 of this paper.

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested. Applicants acknowledge, with appreciation, the indication of allowable subject matter in claim 4, subject to filing of a terminal disclaimer.

The present application concerns an oil-containing spread composition which comprises olive oil and which has no perceivable olive oil odor. In claim 1, the spread is recited to contain at least 10 parts per million of olive oil originating polyphenols. Even higher levels of polyphenols are recited in claims 2 and 3. The Office cites a disclosure of a margarine made from unrefined olive oil, a patent teaching deodorization of an olive oil and a patent teaching debittering olive oil by conversion of oil based polyphenols to aqueous based ones. It is submitted that the Office has pointed to nothing in the cited art which would lead one of ordinary skill to a spread having olive oil with no perceivable olive oil odor yet having the recited levels of polyphenols.

Decio, EP 421 504 is cited as disclosing a margarine prepared from unrefined olive oil. Cheng et al., U.S. Patent No. 5,374,751 is cited as teaching deodorizing edible oil, including olive oil. It is not apparent that one of ordinary skill would include Cheng et al.'s olive oil in Decio's spread or that the spreads of the present invention would result.

The present specification indicates on page 11 that an average olive oil after being deodorized for one hour at the normal temperature of 255°C contains less than 10 ppm of polyphenols. In Table I, use of 234°C still results in a polyphenol content of 62 ppm. Most of the examples of Cheng et al. concerning olive oil utilize temperatures at 255°C or above. See, for example, Examples 1-3. Example 4 talks about temperatures of about 240° to 260°C and includes in Table IV a deodorization temperature of 250°C. The Office points to no indication that Example 4 would inherently result in the

polyphenol amounts recited in the present claim. Moreover, even if it did, the Office points to no teaching in Cheng et al. which would lead one of ordinary skill to select such particular olive oils for use in the spread of Decio et al. Therefore, it is not clear that Cheng et al. achieved the olive oil recited in the present claims nor, even if they do, that one of ordinary skill would be given any reason by the prior art to select such particular olive oils for use in a spread.

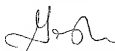
Lal Ganguli et al., EP 849 353 is directed to olive oil with a high polyphenols content and a low bitterness. The olive oil is obtained by exposing olive oil to an emulsified water phase which exhibits enzymatic di-bittering activity and/or by emulsifying with a water phase with a high polyphenols content and evaporating the water phase. Lal Ganguli et al. explain at page 3, lines 39-40 that the debittering effect is obtained not by removal of the bitter compounds but by converting them to non-bitter compounds retaining the beneficial properties ascribed to polyphenols.

Lal Ganguli '353 published less than a year before the U.S. filing date of the present application. Even if the present application were considered not to be entitled to its priority dates and Lal Ganguli were considered prior art to the present invention, which the Office has not established, it is not apparent that Lal Ganguli remedies the deficiencies of the Decio/Cheng combination. The Office points to no teaching in Lal Ganguli that its olive oils should be used in the spreads nor does the Office point to any teaching by Lal Ganguli et al. of a spread which has no perceivable olive oil odour.

Although Applicants do not concede the propriety of the rejection, Applicants are amenable to filing a terminal disclaimer upon indication of allowable subject matter.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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Gerard J. McGowan, Jr.  
Attorney for Applicant(s)  
Reg. No. 29,412

/gjm  
(201) 894-2297

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on February 6, 2006



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Reg. No. 29,412  
Attorney for Applicant(s)

February 6, 2006  
Date of Signature

PATENT

UNUS #98-0032-A-UNI  
CASE #F7420(V)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Van Buuren et al.  
SERIAL NO.: 10/635,711  
FILED: August 6, 2003  
FOR: Olive Oil Containing Food Composition

GROUP: 1761  
EXAMINER: Carolyn Paden  
ENGLEWOOD CLIFFS, NEW JERSEY 07632

NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO THE BOARD OF APPEALS

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant(s) hereby appeals to the Board of Appeals from the decision dated October 4, 2005 of the Primary Examiner final rejection of claims 1-4.

The item(s) check below are appropriate:

- ☐ [ ] A timely response to the final Rejection has been filed.
- ☒ [X] An Extension of Time to respond to the Final Rejection was requested for one month.
- ☐ [ ] An Extension of Time to file a Notice of Appeal was granted for one month(s).
- ☒ [X] Charge statutory fee of \$500.00 to Deposit Account No. 12-1155. Please charge any additional fees or credit overpayment to Deposit Account No. 12-1155. This request is being submitted in triplicate.



Gerard J. McGowan, Jr.  
Attorney for Applicant  
Registration No. 29,412

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on February 6, 2006



Gerard J. McGowan, Jr.  
Reg. No. 29,412  
Attorney for Applicant(s)

February 6, 2006  
Date of Signature

PATENT  
CASE # F7420(V)  
UNUS # 8-0032-A-UNI

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Van Buuren et al.  
Serial No.: 10/635,711  
Filed: August 6, 2003  
For: Olive Oil containing Food Composition  
Group: 1761  
Examiner: Carolyn Paden  
Englewood Cliffs, New Jersey 07632

PETITION FOR EXTENSION OF TIME TO FILE A RESPONSE

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants petition the Commissioner for Patents to extend the time to file a Response for one month from January 4, 2006 to February 4, 2006.

Please charge Deposit Account No. 12-1155 in the amount of \$120.00 to cover the cost of the extension. Any deficiency or overpayment should be charged or credited to this deposit account. This request is being submitted in triplicate.

Respectfully submitted,



Gerard J. McGowan, Jr.  
Attorney for Applicant  
Registration No. 29,412

UNITED STATES DEPT. OF COMMERCE  
Patent and Trademark Office


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COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

on February 6, 2006

  
GERARD J. MCGOWAN, JR.  
Reg. No. 29,412  
Attorney for Applicant(s)

February 6, 2006  
Date of Signature

In re application of: Van Buuren et al.  
Serial No.: 10/635,711  
Filed: August 6, 2003  
For: Olive Oil Containing food Composition  
Group: 1761  
Examiner: Carolyn Paden  
Englewood Cliffs, New Jersey 07632

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is an amendment in the above-identified application.  
☒ No additional fee is required.

The fee has been calculated as shown below.

CLAIMS AS AMENDED

	(2) * Claims Remaining After Amendment		(4)** Highest No. Previously Paid For	(5) Present Extra	(6) Rate	(7) Additional Fee
Total Claims		Minus			\$ 50.00	
Independent Claims		Minus			\$ 200.00	
Multiple Claims					\$ 360.00	
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$ _____	


\*If the entry in Column (2) is less than the entry in Column (4), write "0" in Column (5).

\*\*If the "Highest No. Previously Paid For" is less than "20," write "20" in this space.

- ☐ Charge \$\_\_\_\_\_ to Deposit Acct. #12-1155. Triplicate copies of this letter are enclosed.  
☒ The Commissioner is hereby authorized to charge any additional fees, which may be required to our  
deposit account No. 12-1155, including all required fees under  
☒ 37 C.F.R. § 1.16;  
☒ 37 C.F.R. § 1.17;  
☒ 37 C.F.R. § 1.18.

Triplicate copies of this letter are enclosed.

/gjm  
(201) 894-2297

  
Gerard J. McGowan, Jr.  
Attorney of Record  
Reg. #29,412